



T: 617.330.7000 F: 617.330.7550
50 Rowes Wharf, Boston, MA 02110

August 25, 2008

HAND DELIVERED AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Department of Public Utilities
One South Station
2nd Floor
Boston, MA 02110

*RE: Comments of Wal-Mart Stores East, L.P. on Program Administrators' August 15
Proposals
NSTAR Electric Company 2008 Energy Efficiency Plan, D.P.U. 08-10; Fitchburg
Gas and Electric Light Company 2008 Energy Efficiency Plan, D.P.U. 08-30;
National Grid 2008 Energy Efficiency Plan, D.P.U. 08-08*

Dear Secretary Cottrell:

Wal-Mart Stores East, L.P. ("Wal-Mart") appreciates the opportunity to submit comments regarding the Energy Efficiency ("EE") Program Administrators' proposals, which were submitted to the Department of Public Utilities ("Department") on August 15, 2008.

As addressed further below, Wal-Mart agrees with the Department and Department of Energy Resources ("DOER") that the potential for high heating costs this winter is of great concern. Wal-Mart submits, however, that the determination of the appropriate funding mechanism for recovery of the utilities' incremental expenditures is not a decision that requires the Department to forego its standard procedures for reviewing general rate increases. Thus, Wal-Mart urges the Department to delay a decision on any tariff changes that could result in a new EE charge being assessed on all ratepayers until the Department has fully investigated the propriety and reasonableness of such a charge and considered the factors set forth in Section 11 of the Green Communities Act ("GCA").

Background

On July 16, 2008, the Department of Energy Resources ("DOER") filed a letter with the Department requesting that the Department consider an immediate increase in funding for EE programs targeted at residential heating end users. On July 25, 2008, the Department issued a memorandum to all EE Program Administrators in which it agreed that there is an urgent need to expand funding for existing residential gas and electric efficiency programs in order to respond to the potential for very high heating costs in the coming months. Accordingly, the Department asked all EE Program Administrators to file proposals to increase spending for residential heating programs effective as soon as possible, and covering the 2008 winter season. In addition, the Department held a technical conference on July 29, 2008 to discuss issues and concerns that EE Program Administrators, the Attorney General and non-utility parties may have with implementing the funding increases. On August 1, 2008, the Department issued another memorandum in which it required EE Program Administrators to file their proposals with the Department no later than August 15, 2008 and established August 25, 2008 as the deadline for the Attorney General and others to provide comments on the utilities' proposals.

Thus, on August 15, 2008, EE Program Administrators submitted their proposals. All the electric utilities have proposed increases in funding for their EE programs.¹ However, two of the utilities, Fitchburg Gas and Electric Light d/b/a Unitil ("Fitchburg") and NSTAR Electric Company ("NSTAR"), also have asked the Department to approve tariff changes which could result in all ratepayers being assessed a new EE charge. Both NSTAR and Fitchburg propose to have these changes go into effect on January 1, 2009.²

Comments

Wal-Mart understands and appreciates the fact that in order to meet customers' needs this winter, the Department must conduct its review of the proposed funding increases for residential heating programs on an expedited basis. However, Fitchburg and NSTAR ask the Department not only to approve a proposed increase in spending on an expedited basis, but also to approve a recovery mechanism for their incremental expenditures that could result in a general rate increase for all ratepayers. In doing so, Fitchburg and NSTAR ask the Department to immediately approve a general rate change to go into effect in 2009 without conducting a thorough investigation, issuing discovery or holding public hearings -- all of which are necessary

¹ Western Massachusetts Electric Company filed a letter indicating it did not have a proposal at this time, but intended to include one as part of its 2008 EE Plan.

² Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid did not make a funding proposal in this filing and instead, intends to request recovery for the additional EE spending at the time it files its 2009 EE Plan.

to determine the propriety and reasonableness of the changes and to preserve due process and any and all parties' right to a hearing.³

Such lack of process and careful Department review is in contrast to the Department's long-standing precedent regarding the procedures required before a general rate increase may be imposed. See G.L. c. 164 § 94,⁴ 220 CMR 5.00; *Regulations Governing the Filing of Rate Requests*, D.P.U. 19019-A (1976); *Dedham Water Company*, D.P.U. 85-119, at 13 (1985) (petition for rate change dismissed, in part, for failure to provide adequate supporting data); *Massachusetts Electric Company v. Department of Public Utilities*, 383 Mass. 675, 680 (same). Indeed, even when the Department determines that a particular rate change does not require a full rate case pursuant to G.L. c. 164, § 94, the Department still conducts a thorough investigation into the proposed change, providing public notice, allowing public participation/intervention, collecting evidence and holding public hearings. See e.g., *Bay State Gas Company*, D.P.U. 07-89 (2008).

The request for immediate approval of the tariff changes also directly conflicts with the requirements of the GCA. As the Department is aware, before the GCA, EE expenditures were capped at the amount collected by the System Benefits Charges ("SBC"). The GCA eliminates that cap and allows additional EE expenditures to be funded through three possible additional funding sources: (1) amounts generated by the utilities under the FCM; (2) cap and trade programs such as RGGI; and (3) other funding as approved by the Department after consideration of "(i) the effect of any rate increases on residential and commercial customers; (ii) the availability of other private or public funds, utility administered or otherwise, that may be available for energy efficiency or demand resources; and (iii) whether past programs have lowered the cost of electricity to residential and commercial consumers." See GCA, Section 11.

³ While NSTAR has submitted pre-filed testimony to support its proposed rate change, that testimony alone cannot provide the Department with an adequate record to approve and implement a new EE charge on all ratepayers. Among other things, the testimony does not address the factors the Department is required to consider under the GCA, as discussed further below.

⁴ G.L. c. 164 § 94 provides in relevant part:

"Whenever the department receives notice of any changes proposed to be made in any schedule filed under this chapter which represent a general increase in rates, prices and charges for gas or electric service, it shall notify the attorney general of the same forthwith, and shall thereafter hold a public hearing and make an investigation as to the propriety of such proposed changes after first causing notice of the time, place and the subject matter of such hearing to be published at least twenty-one days before such hearing in such local newspapers as the department may select."

Mary Cottrell, Secretary
August 25, 2008
Page -4-

Thus, the GCA requires the Department to consider specific factors before it can approve any funding sources for EE programs beyond the SBC, FCM and cap and trade programs such as RGGL. The NSTAR and Fitchburg proposed tariff changes call for funding beyond the SBC, FCM and cap and trade programs, *i.e.*, ratepayers also will be charged for any shortfalls in EE funding in addition to the above SBC that ratepayers already directly fund through utility bills. Therefore, NSTAR's and Fitchburg's request that the Department approve their proposed tariff changes without any review of the above factors or any evidence related thereto directly conflicts with the requirements of the GCA.

In light of the above, Wal-Mart urges the Department to delay any decision on NSTAR's and Fitchburg's proposed tariff changes, or any similar proposals that could result in ratepayers having to pay new EE charges, until the Department has fully investigated the reasonableness and propriety of the proposed increase as well as the factors outlined by the Legislature in GCA Section 11. Such an investigation, that provides for public participation, discovery and hearings, will allow the Department to develop an appropriate record with evidence to support a decision, while preserving due process to all ratepayers and interested parties.⁵

Wal-Mart looks forward to continuing to work with the Department, the DOER and utilities as well as other interested parties on these and other EE issues.

Thank you for your attention to this matter. Please date stamp a copy of this letter and return it to the messenger for our files.

Respectfully submitted,



Robert D. Shapiro
Rebecca L. Tepper
For Wal-Mart Stores East, L.P.

/jmh

cc: Service List

⁵ The Department could move forward with its review of the proposed increases to ensure that customers' needs are met this winter, while delaying consideration of the appropriate mechanism for recovery of the utilities' incremental expenditures. A review of funding mechanisms could be conducted in a new proceeding or as part of the utilities' 2009 EE Plans.